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Attorneys for Plaintiff,
Athena Hohenberg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ATHENA HOHENBERG, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

FERRERO U.S.A, INC., a foreign corporation,

Defendant.

CASE NO. '11CV0205 H CAB

COMPLAINT FOR:

1. UNFAIR COMPETITION (COMMON LAW AND CALIF. BUS. & PROF. CODE § 17200);
2. FALSE ADVERTISING (CALIF. BUS. & PROF. CODE § 17500, ET SEQ.);
3. VIOLATION OF CONSUMER LEGAL REMEDIES ACT (CALIF. CIV. CODE § 1750, ET SEQ.);
4. BREACH OF EXPRESS WARRANTY;
5. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

Jury Trial Demanded

CLASS ACTION

Plaintiff, ATHENA HOHENBERG ("Plaintiff" or "Hohenberg"), on behalf of herself, all others similarly situated, and the general public, by and through the undersigned counsel, and upon information and belief and investigation of counsel, hereby alleges as follows against FERRERO U.S.A, INC. ("Defendant" or "Ferrero"):

THE PARTIES

1. Plaintiff, Ms. Hohenberg, is, and was at all relevant times herein mentioned, a resident of the County of San Diego in California who purchased Nutella® for herself and her four-year-old child because she sought a healthy snack or breakfast alternative for her household.

2. Plaintiff is informed and believes and thereon alleges that FERRERO U.S.A, INC. ("Defendant" or "Ferrero"), at all relevant times herein alleged, is a Delaware corporation with its principal place of business in New Jersey. Plaintiff is further informed and believes and thereon alleges that Ferrero is and was at all relevant times herein admitted to do and does conduct business within the State of California, the County of San Diego and this judicial district under the laws of the State of California.

3. Plaintiff is informed and believes and thereon alleges that Ferrero is the manufacturer of Nutella® spread.

4. Whenever the Complaint refers to any act or acts of Defendant, the references shall include the directors, officers, employees, affiliates, or agents of Defendant who authorized such act while engaged in the management, direction, or control of the affairs of Defendant.

5. Plaintiffs have incurred and, during the pendency of this action, will incur expenses for attorneys' fees and costs herein. Such attorneys' fees and costs are necessary for the prosecution of this action and will result in a benefit to each of the members of the class.

JURISDICTION AND VENUE

6. This court has original jurisdiction under 28 U.S.C. § 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and there are numerous members of class of plaintiffs that are citizens of a state other than the state of which Defendant is a citizen.

7. This court has personal jurisdiction over Defendant, and each of them, as they are at all relevant times hereinafter mentioned are and have been operating or conducting business throughout the state of California and within this judicial district.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because many of the acts and transactions, including the purchases and sales giving rise to this action occurred in this

1 District and Defendant is authorized to conduct business in this District and has intentionally availed
2 itself of the laws and markets of this District through promotion, marketing, distribution, and sale of
3 its products in this District.

4 INTRODUCTION

5 9. Plaintiffs repeatedly purchased packaged food products manufactured by Ferrero in
6 California during the Class Period defined herein.

7 10. Ms. Hohenberg has a four-year-old child. At various times during the Class Period,
8 Ms. Hohenberg purchased Nutella® spread after being exposed to and relying upon advertisements
9 and representations by Defendant that Nutella® is a “healthy breakfast” and is “nutritious.” Ms.
10 Hohenberg was searching for healthy foods to serve her family for breakfast or as a snack because she
11 is aware that healthy nutrition is important for maintaining the overall health of her family. Ms.
12 Hohenberg trusted the representations made by Ferrero in its labeling Nutella®, “An example of a
13 tasty yet *balanced breakfast*,” in association with a picture showing fresh fruits, whole wheat bread,
14 and orange juice. Ms. Hohenberg believed based on this representation that Nutella® is part of a
15 healthy meal. The Nutella® label also includes a link to a website showing pictures of a mother
16 feeding Nutella® to happy, healthy children. Ferrero also broadcast television commercials
17 portraying a mother feeding Nutella® to happy, healthy children. Ms. Hohenberg believed, based on
18 these representations both individually and especially when taken together as a whole, that Nutella®
19 consumption is beneficial to children. Nutella®, however, contains about 70% saturated fat and
20 processed sugar by weight. Both these ingredients significantly contribute to America’s alarming
21 increases in childhood obesity, which can lead to life-long health problems. Therefore, Nutella® is
22 not part of a nutritionally “balanced” breakfast for consumption by children as Defendant’s
23 advertising deceptively suggests.

24 11. In or around December 2010, Ms. Hohenberg learned through friends what ingredients
25 were in the Nutella® that she was feeding her family. She was shocked to learn that Nutella® was in
26 fact not a “healthy” “nutritious” food but instead was the next best thing to a candy bar, and that
27 Nutella® contains dangerous levels of saturated fat, the consumption of which has been shown to
28 cause heart disease and other serious health problems. Nutella® contains over 55% processed sugar,

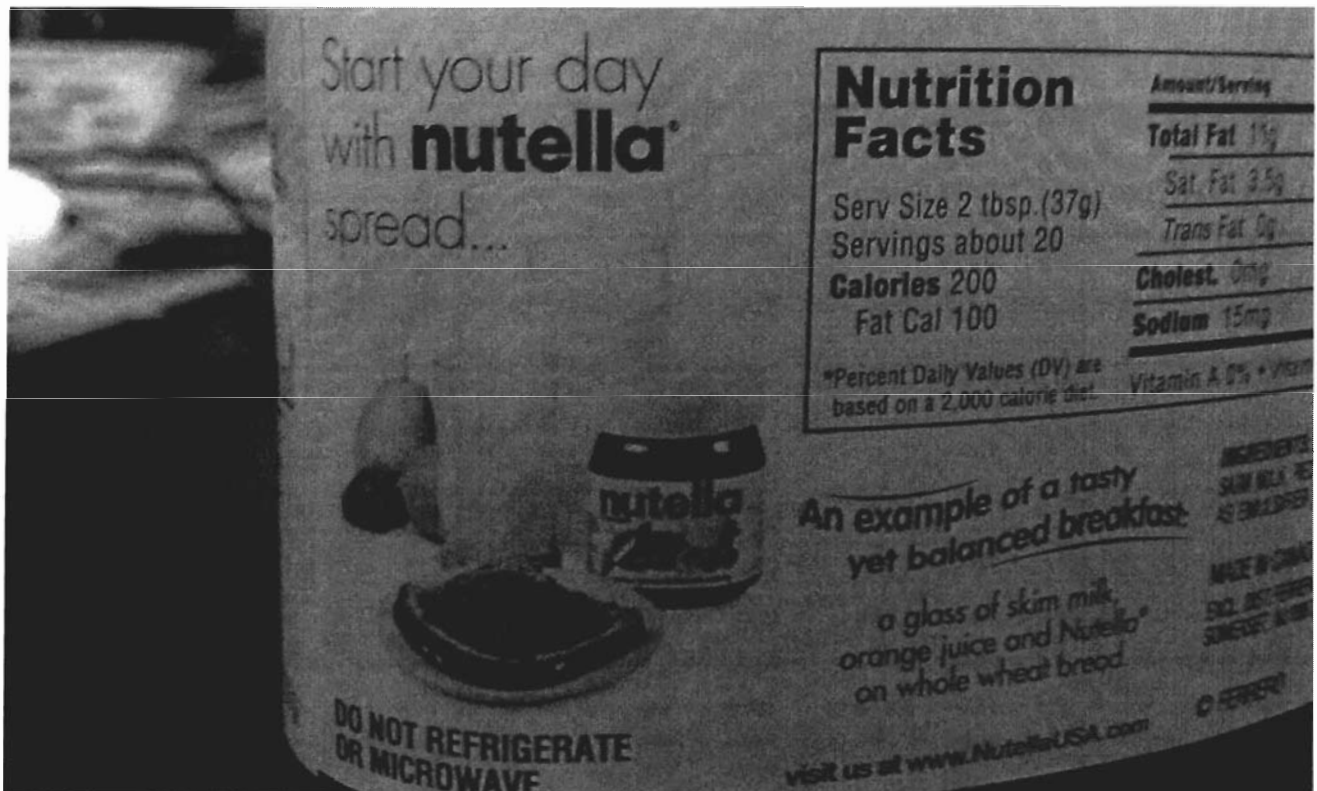
1 the consumption of which has been shown to cause type-2 diabetes and other serious health problems.

2 In short, Nutella® is simply not a “healthy” or “nutritious” product to consume.

3 12. Ferrero falsely and misleadingly markets Nutella® as healthful although it contains
4 dangerous levels of saturated fat, which can increase the blood cholesterol levels in those who
5 consume it. Saturated fat is the main dietary cause of high blood cholesterol. Moreover, high levels
6 of cholesterol can increase ones’ risk of a heart attack, stroke, and narrowed arteries (atherosclerosis).

7 13. Plaintiffs seek an order compelling Ferrero to (1) cease marketing its products using
8 the misleading tactics complained of herein, (2) conduct a corrective advertising campaign, (3) restore
9 the amounts by which Ferrero was unjustly enriched, and (4) destroy all misleading and deceptive
10 materials and products.

11 **SPECIFIC MISREPRESENTATIONS, MATERIAL OMISSIONS AND DECEPTIVE ACTS**



14. Ferrero labeled Nutella® representing that it is “An example of a tasty yet *balanced breakfast*,” in association with a picture showing fresh fruits, whole wheat bread, and orange juice. Ferrero also made representation that Nutella® is part of a healthy meal. The Nutella® label also includes a link to a website showing pictures of a mother feeding Nutella® to happy children. Ferrero also broadcast television commercials portraying a mother feeding Nutella® to happy, healthy children. Ferrero also made representations that consumption of Nutella® is beneficial to children. Ferrero did and intended to convey with its statements and images that Nutella® is a wholesome and healthful product, when in fact consuming Nutella® daily, a behavior Ferrero implies through its advertising is healthful and not harmful, could create a substantial health risk, raise cholesterol levels, cause disease, damage the heart, and increase the risk and severity of type-2 diabetes. Ferrero’s misleading health claims are reinforced by deceptive images of a glass of milk, fruit, and whole wheat toast used throughout its advertising campaign.



15. **False and misleading “balanced nutrition” Claim and Images:** Ferrero has engineered a marketing campaign focusing on the purported “nutritional” value of Nutella® as a breakfast food. For instance, its ad campaign includes images and videos of wholesome families and happy, healthy children enjoying Nutella® for breakfast before going to school. This claim is misleading because Nutella® contains high levels of saturated fats, which harms the heart by raising blood cholesterol levels, a fact Ferrero deceptively omits. Moreover, the nutritional value claimed, if any, is not derived from Nutella®, but instead is dependent on whatever *other* foods or drinks (such as the whole grain bagel, 1/2 cup of sliced strawberries and 1 cup of 1% milk) that are advertised to be consumed along with Nutella®. Furthermore, these claims are *not complete, not truthful, and highly misleading* because Nutella® contains unhealthy levels of saturated fat that are harmful to the heart by raising cholesterol levels. Additionally, the stated nutritional facts for Nutella® are comparable to other foods that are not considered a part of a “balanced” breakfast. For example, Nutella® has *more* saturated fat than Hershey’s PAYDAY Peanut Caramel Bar (2.5g of saturated fat) and the same amount of saturated fat as a Twix Ice Cream bar.

RELIANCE AND INJURY

16. When purchasing Nutella®, Plaintiff was seeking, for herself and her household, a healthy snack or breakfast alternative, including a product that did not negatively affect blood cholesterol levels or the health of her or her families' cardiovascular systems, as well as products made with natural, healthy ingredients.

17. Plaintiff understood and relied upon Ferrero’s misrepresentations for each purchase of Nutella® made during the Class Period, including, for example, “moms are helping nourish their children with whole grains,” “A *balanced breakfast* is key to a great start each morning for the entire family, especially for children,” “An example of a tasty yet *balanced breakfast*,” and “Nutella® can form a part of a *balanced meal*.”

18. Plaintiff purchased Nutella® believing it had the qualities she sought based on its deceptive advertising and misrepresentations, but the product was actually unsatisfactory to her for the reasons described herein.

19. Nutella® costs more than similar products without misleading advertisements and

1 misrepresentations, and would have costs less absent the false and misleading statements.

2 20. Plaintiff and members of the Classes paid more for Nutella, and would have only been
3 willing to pay less, if anything at all, had they not been misled by the false and misleading
4 advertisements and misrepresentations complained of herein. Plaintiff and members of the Class
5 would not have purchased Nutella® at the prices they did, or would not have purchased Nutella® at
6 all, absent Defendant's false and misleading advertisements and misrepresentations.

7 21. For these reasons, Nutella® was worth less than what Plaintiff and members of the
8 Classes paid for them.

9 22. Plaintiff and members of the Classes purchased Nutella® instead of competing
10 products based on the false statements and misrepresentations described herein.

11 23. Instead of receiving products that have the advantages inherent in being free of high
12 levels of saturated fat and comprised of natural, healthy ingredients, Plaintiff and members of the
13 Class received products that were comprised of highly-refined, highly-processed, and nutritionally
14 empty ingredients, and dangerous levels of saturated fats.

15 24. Plaintiff and members of the Classes lost money as a result of Ferrero's deception in
16 that they did not receive what they paid for.

17 25. Plaintiff and members of the Classes altered their position to their detriment and
18 suffered damages in an amount equal to the amount they paid for Nutella®.

19 **DELAYED DISCOVERY**

20 26. Plaintiff was a reasonably diligent consumer looking for products for herself and her
21 family household that were generally healthy and nutritious. Nevertheless, Plaintiff did not discover
22 that Ferrero's labeling of Nutella® was false, deceptive, or misleading until December 2010.

23 27. Plaintiff was unaware of the grave health consequences of consuming products like
24 Nutella® before that time.

25 28. Plaintiff is not a nutritionist, food expert, or food scientist; she is a lay consumers who
26 did not possess the specialized knowledge Ferrero had which otherwise would have enabled her to
27 associate high levels of saturated fat and refined sugar with disease.

28 29. Plaintiff, in the exercise of reasonable diligence, could not have discovered Ferrero's

1 deceptive practices earlier because, like nearly all consumers, she does not read scholarly publications
2 or other materials describing the negative impact of consuming foods high in saturated fat and refined
3 sugars.

4 **CLASS ACTION ALLEGATIONS**

5 30. Plaintiff brings this action on behalf of herself and the following Classes in accordance
6 with Rule 23 of the Federal Rules of Civil Procedure:

7 **A. Restitution Class** - All persons (excluding officers, directors, and employees of Ferrero) who
8 purchased, on or after January 1, 2000 (the "Class Period"), one or more Nutella® products in
9 the United States for their own or household use rather than resale or distribution.

10 **B. Injunctive Relief Class** - All persons (excluding officers, directors, and employees of Ferrero)
11 who commonly purchase or are in the market for Nutella® in the United States for their own
12 or household use rather than resale or distribution.

13 31. Questions of law and fact common to Plaintiffs and the Classes include:

- 14 a. Whether Ferrero contributed to, committed, and/or is responsible for the conduct
15 alleged herein;
16 b. Whether Ferrero's conduct constitutes the violations of laws alleged herein;
17 c. Whether Ferrero acted willfully, recklessly, negligently, or with gross negligence in
18 the violations of law alleged herein;
19 d. Whether Class Members are entitled to injunctive relief; and
20 e. Whether Class Members are entitled to restitution.

21 32. By purchasing and/or using Nutella®, all members of the Classes were subjected to the
22 same wrongful conduct.

23 33. Absent Ferrero's material deceptions, misstatements, and omissions, Plaintiff and other
24 members of the Classes would not have purchased Nutella®.

25 34. Plaintiff's claims are typical of the Classes' claims. Plaintiff will fairly and adequately
26 protect the interests of the Classes, has no interests that are incompatible with the interests of the
27 Classes, and has retained counsel competent and experienced in class litigation.

28 35. The Classes are sufficiently numerous, as they include at least hundreds of thousands

1 of individuals who purchased Nutella® throughout the United States during the Class Period.

2 36. Class representation is superior to other options for the resolution of the controversy.
3 The relief sought for each Class member is small. Absent the availability of class action procedures, it
4 would be infeasible for Class members to redress the wrongs done to them.

5 37. Ferrero has acted on grounds applicable to the Classes, thereby making appropriate
6 final injunctive relief or declaratory relief concerning the Classes as a whole.

7 38. Questions of law and fact common to the Classes predominate over any questions
8 affecting only individual members.

9 39. Class treatment is appropriate under FRCP 23(a) and both 23(b)(2) and 23(b)(3).
10 Plaintiff do not contemplate class notice if the classes are certified under FRCP 23(b)(2), which does
11 not require notice, and notice via publication if the classes are certified under FRCP 23(b)(3) or if the
12 Court determines class notice is required notwithstanding that notice is not required under FRCP
13 23(b)(2). Plaintiff will, if notice is required, confer with Defendant and seek to present the Court with
14 a stipulation and proposed order on the details of a class notice plan.

15 FIRST CAUSE OF ACTION

16 **Violations of the California Unfair Competition Law,**

17 **Bus. & Prof. Code §§ 17200 et seq.**

18 **(Unlawful)**

19 40. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
20 forth in full herein.

21 41. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or
22 practice.”

23 42. The acts, omissions, misrepresentations, practices, and non-disclosures of Ferrero as
24 alleged herein constitute “unlawful” business acts and practices in that Ferrero’s conduct violates the
25 False Advertising Law and the Consumer Legal Remedies Act.

26 43. Ferrero’s conduct is further “unlawful” because it violates the following provisions of the
27 Federal Food, Drug, and Cosmetic Act (“FFDCA”) and its implementing regulations:

28 a. 21 U.S.C. § 343(a), which deems food misbranded when the label contains a statement

1 that is “false or misleading in any particular;”

2 b. 21 C.F.R. § 10 1.13(i)(3), which bars nutrient content claims voluntarily placed on the
3 front of a product label that are “false or misleading in any respect”;

4 c. 21 C.F.R. § 101.14(d)(2)(ii)-(iii), in that Ferrero’s claims concerning the supposed
5 benefits of Nutella® to health are not limited to describing the value that ingesting the
6 substance may have on a particular health related condition, and further because they are
7 not complete, not truthful, and highly misleading; and

8 d. 21 C.F.R. § 1.21, which prohibits true statements about ingredients that are misleading in
9 light of the presence of other ingredients.

10 44. Ferrero’s conduct also violates the California Sherman Food, Drug, and Cosmetic Law
11 (“Sherman Law”), at, *inter alia*, (a) Health & Safety Code § 110660, which deems food products
12 “misbranded” if their labeling is “false or misleading in any particular,” and (b) Health & Safety Code §
13 110670, which bars nutrient content and health claims voluntarily placed on the front of a product label
14 that fail to comply with the federal regulation for nutrient content and health claims.

15 45. Each of the challenged statements made by Ferrero, by violating the FFDCA and
16 Sherman Law, further violate the “unlawful” prong of the UCL.

17 46. Ferrero’s conduct also violates the California False Advertising Law and Consumer
18 Remedies Act, as further described herein, and for that reason further violates the UCL’s “unlawful”
19 prong.

20 47. Ferrero leveraged its deception to induce Plaintiff and members of the Classes to purchase
21 products that were of lesser value and quality than advertised.

22 48. Plaintiff and members of the Classes suffered injury in fact and lost money or property as
23 a result of Ferrero’s deceptive advertising in that they were denied the benefit of the bargain when they
24 decided to purchase Nutella® over competitor products, which are less expensive and/or contain healthier
25 ingredients, or which do not claim, like Nutella®, to be healthy. Had Plaintiff and members of the
26 Classes been aware of Ferrero’s false and misleading advertising tactics, they would have paid less than
27 what they did for Nutella® or not purchased the product at all.

28 49. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Ferrero

1 from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices and to
2 commence a corrective advertising campaign.

3 50. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the
4 sale of Nutella®, which were unjustly acquired through acts of unlawful, unfair, and/or fraudulent
5 competition.

6 **SECOND CAUSE OF ACTION**

7 **Violations of the California Unfair Competition Law**

8 **Bus. & Prof. Code §§ 17200 et seq.**

9 **(Unfair and Fraudulent)**

10 51. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
11 forth in full herein.

12 52. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or
13 practice.”

14 53. The false and misleading labeling of Nutella®, as alleged herein, constitutes “unfair”
15 business acts and practices because such conduct is immoral, unscrupulous, and offends public policy.
16 Further, the gravity of Ferrero’s conduct outweighs any conceivable benefit of such conduct.

17 54. Defendant placed Nutella® into the stream of commerce with knowledge that, through the
18 intended use of such products, individuals, including young children, will be exposed to high and
19 dangerous levels of saturated fat and highly-refined sugars.

20 55. Defendant knew or should have known that high and dangerous levels of saturated fat and
21 sugar causes heart disease, type 2 diabetes, cancer and death.

22 56. The acts, omissions, misrepresentations, practices, and non-disclosures of Ferrero as
23 alleged herein constitute “fraudulent” business acts and practices because Ferrero’s conduct is false and
24 misleading to Plaintiff, members of the Classes, American consumers, and the general public.

25 57. Defendant’s labeling and marketing of Nutella® using claims such as “balanced
26 nutrition,” “moms are helping nourish their children with whole grains,” “A *balanced breakfast* is key
27 to a great start each morning for the entire family, especially for children,” “An example of a tasty yet
28 balanced breakfast,” and “Nutella® can form a part of a balanced meal.”—which are likely to create

1 expectations of safety and well-being among consumer—is likely to deceive members of the Classes,
 2 American consumers, and the general public about the healthfulness and safety of Defendant's Nutella®
 3 product.

4 58. Defendant either knew or reasonably should have known that the claims on the labels of
 5 Nutella® were untrue and misleading.

6 59. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Ferrero
 7 from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices and to
 8 commence a corrective advertising campaign.

9 60. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the
 10 sale of Nutella®, which were unjustly acquired through acts of unlawful, unfair, and/or fraudulent
 11 competition.

12 **THIRD CAUSE OF ACTION**

13 **Violations of the California False Advertising Law,**

14 **Bus. & Prof. Code § 17500 et seq.**

15 61. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set
 16 forth in full herein.

17 62. In violation of Bus. & Prof. Code § 17500 et seq., the advertisements, labeling, policies,
 18 acts, and practices described herein were designed to, and did, result in the purchase and use of the
 19 products without the knowledge that Nutella® contain high levels of saturated fat.

20 63. Ferrero either knew or reasonably should have known that the labels on Nutella® were
 21 false and misleading.

22 64. As a result, Plaintiffs, the Classes, and the general public are entitled to injunctive and
 23 equitable relief, restitution, and an order for the disgorgement of the funds by which Ferrero was unjustly
 24 enriched.

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FOURTH CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Civ. Code § 1750 *et seq.*

(Injunctive Relief)

65. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

66. The CLRA has adopted a statutory scheme prohibiting various deceptive practices in connection with the conduct of a business providing goods, property, or services primarily or personal, family, or household purposes.

67. Ferrero's policies, acts, and practices were designed to, and did, result in the purchase and use of the products primarily for personal, family, or household purposes, and violated and continue to violate the following sections of the CLRA:

- a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.
- b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.
- c. § 1770(a)(9): advertising goods with intent not to sell them as advertised.
- d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

68. As a result, Plaintiff and members of the Classes have suffered irreparable harm and are entitled to injunctive relief.

69. In compliance with Civ. Code § 1782, Plaintiff has given written notice to Ferreror of their claims.

FIFTH CAUSE OF ACTION

Breach of Express Warranty

70. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

71. Beginning at an exact date unknown to Plaintiff, but at least since four years prior to the

1 filing date of this action, and as set forth hereinabove, Defendant made representations to the public,
2 including Plaintiff, by its advertising, packaging and other means, that Nutella® is “an example of a tasty
3 yet *balanced breakfast*,” among other representations. That promise became part of the basis of the
4 bargain between the parties and thus constituted an express warranty.

5 72. Thereon, Defendant sold the goods to Plaintiff and other consumers, who bought the
6 goods from Defendant.

7 73. However, Defendant breached the express warranty in that the goods were in fact not an
8 “example of a tasty yet *balanced breakfast*,” or healthy, as set forth in detail hereinabove. As a result of
9 this breach, Plaintiff and other consumers in fact did not receive goods as warranted by Defendant.

10 74. As a proximate result of this breach of warranty by Defendants, Plaintiffs and other
11 consumers have been damaged in an amount to be determined at trial.

12 **FIFTH CAUSE OF ACTION**

13 **Breach of Implied Warranty of Merchantability**

14 75. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
15 forth in full herein.

16 76. Beginning at an exact date unknown to Plaintiff, but at least since four years prior to the
17 filing date of this action, and as set forth hereinabove, Defendant made representations to the public,
18 including Plaintiffs, by their advertising, packaging and other means that Nutella® is “an example of a
19 tasty yet *balanced breakfast*,” among other representations. Plaintiff and other consumers bought those
20 goods from Defendant.

21 77. Defendant was a merchant with respect to goods of this kind which were sold to Plaintiff
22 and other consumers, and there was in the sale to Plaintiff and other consumers an implied warranty that
23 those goods were merchantable.

24 78. However, Defendant breached that warranty implied in the contract for the sale of goods
25 in that Nutella® is in fact not “an example of a tasty yet *balanced breakfast*” and is also not a “healthy”
26 nor “nutritious” breakfast food, as set forth in detail hereinabove.

27 79. As a result of Defendant’s conduct, Plaintiff and other consumers did not received goods
28 as impliedly warranted by Defendant to be merchantable.

80. As a proximate result of this breach of warranty by Defendant, Plaintiff and other consumers have been damaged in an amount to be determined at trial.

P R A Y E R

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for judgment against Ferrero and all of the Defendant as follows:

ON ALL CAUSES OF ACTION

- A. An order declaring this action to be a proper class action and requiring Ferrero to bear the cost of class notice.
- B. An order enjoining Ferrero from:
 - a. Marketing Nutella® as “healthy.”
 - b. Marketing Nutella® as “balanced nutrition.”
 - c. Marketing Nutella® as “moms are helping nourish their children with whole grains.”
 - d. Marketing Nutella® as “Nutella® can form a part of a balanced meal.”
 - e. Marketing Nutella® as “An example of a tasty yet balanced breakfast.”
 - f. Marketing Nutella® as recommended or acceptable as a breakfast food.
 - g. Marketing Nutella® using the words “healthy”, “wholesome,” “balanced,” “balanced nutrition” or “nutritious.”
- C. An order compelling Ferrero to conduct a corrective advertising campaign to inform the public that its products contain unsafe amounts of saturated fat at consumers' actual consumption levels.
- D. An order requiring Ferrero to disgorge or return all monies, revenues, and profits obtained by means of any wrongful act or practice.
- E. An order compelling Ferrero to destroy all misleading and deceptive advertising materials and products.
- F. An order requiring Ferrero to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the UCL, FAL or CLRA,

1 plus pre-and post-judgment interest thereon.

2 G. Costs, expenses, and reasonable attorneys' fees.

3 H. For damages in an amount to be determined at trial.

4 I. For punitive damages.

5 J. For all such other and further relief as the Court may deem just and proper.

6 **JURY DEMAND**

7 Plaintiff demands a trial by jury on all causes of action so triable.

8
9 DATED: February 1, 2011

Respectfully submitted,

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11 By: 

12 Ronald A. Marron
13 Law Offices of Ronald A. Marron, APLC
14 Attorneys for Plaintiffs
15 Ron.marron@gmail.com
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Athena Hohenberg, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ronald A. Marron, 3636 Fourth Ave., Ste. 202, San Diego, CA 92103, 619-696-9006

DEFENDANTS

Ferrero U.S.A., Inc., a foreign corporation

County of Residence of First Listed Defendant Somerset
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV0205 H CAB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|--|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332

Brief description of cause:

Diversity

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/01/2011

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____